

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Jeffery Johnson,

7 Plaintiff,

8 v.

9 United Services Automobile Association, et
al.,

10 Defendants.

Case No. 2:22-cv-00532-JCM-DJA

11
12 **Order**

13 Defendants USAA Casualty Insurance Company and United Services Automobile
14 Association have filed notices of their intent to serve *subpoenas duces tecum* on the docket. (ECF
15 Nos. 25-36). However, the Court construes these notices to be discovery papers for three reasons.
16 It thus kindly directs the Clerk of Court to strike these filings from the docket.

17 First, under Local Rule 26-7, discovery papers “must not be filed with the court until they
18 are used in the proceeding, unless the court orders otherwise.” That rule excludes documents
19 listed in Federal Rule of Civil Procedure 5(d)(1)(A). LR 26-7. The Court construes Federal Rule
20 of Civil Procedure 5(d)(1)(A) to contemplate notices of *subpoena duces tecum* like the ones filed
21 here. *See* Fed. R. Civ. P. 5(d)(1)(A) (specifying “requests for documents or tangible things”).

22 Second, under Local Rule IC 4-1(c)(3), “[w]hen a document is a subpoena, it must be
23 served under applicable Federal Rules of Procedure,” even if it is electronically filed. Federal
24 Rule of Civil Procedure 45(b) does not contemplate service via electronic filing. *See* Fed. R. Civ.
P. 45(b). And Defendant’s notices do not argue that it does.

25 Third, other courts in this district have discussed that the electronic filing system is not
26 intended to be used to serve discovery. *See Cannon v. Austal USA LLC*, No.15-cv-2582-CAB-
27 BLM, 2017 WL 1365699, at *3 (S.D. Cal. April 14, 2017) (explaining that “there is no [Notice of
28 Electronic Filing] constituting service of the discovery at issue because discovery is not intended

1 to be filed on the CM/ECF system”); *see Taylor v. County of Pima*, No. cv-15-00152-TUC-RM,
2 2021 WL 5040337, at *5 n.6 (D. Ariz. Oct. 29, 2021) (declining to find that a party served a
3 subpoena through the electronic filing system in part because they “failed to show that serving a
4 subpoena via a notice of electronic filing is proper under Rule 45”). The Court also has the
5 inherent power to strike improper filings under its inherent power to control the docket. *See, e.g.,*
6 *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010). The Court finds the
7 Southern District of California and District of Arizona’s discussions persuasive here and strikes
8 the notices from the docket using its inherent power.

9
10 **IT IS THEREFORE ORDERED** that Defendants’ notices of *subpoena duces tecum* (ECF
11 Nos. 25 – 36) are **stricken**. The Clerk of Court is kindly directed to strike these filings.

12 DATED: June 23, 2022

13 
14 _____
15 DANIEL J. ALBREGTS
16 UNITED STATES MAGISTRATE JUDGE
17
18
19
20
21
22
23
24
25
26
27
28